IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

MACON COUNTY INVESTMENTS, INC.; REACH ONE, TEACH ONE OF AMERICA, INC.,	)	
PLAINTIFFS,	)	
v.	)	**CIVIL ACTION NO.: 3:06-cv-224 WKW**
SHERIFF DAVID WARREN, in his official capacity as the SHERIFF OF MACON COUNTY, ALABAMA,	)	
DEFENDANT.	)	

RESPONSE TO DEFENDANT'S NOTICE OF SUPPLEMENTAL AUTHORITY

COME NOW the Plaintiffs Macon County Investments, Inc. (hereinafter referred to as "MCI") and Reach One, Teach One of America, Inc. (hereinafter referred to as "Reach One, Teach One") and hereby submit this Response to Defendant's Notice of Supplemental Authority. The Plaintiffs state the following:

1. The Defendant cites the case of *Alkov v. City of Miami Beach*, No. 05-15606, 2006 WL 1428265, at *1 (11th Cir. May 24, 2006) (slip opinion) to support the contention that MCI lacks standing to pursue the claims asserted in the Amended Complaint.

2. In *Alkov*, the Eleventh Circuit held that a for-profit commercial vendor did not have standing to bring suit under an ordinance which created rights only for non-profit entities. The Defendant claims that MCI is likened to the for-profit vendor in *Alkov* because Amendment 744 to the Alabama Constitution (1901) only creates rights in non-profit entities.

3. The Defendant is wrong in this assertion. Amendment 744 allows non-profit entities to contract with *for-profit entities to operate the bingo facilities on their behalf and for a fee*.

> "A nonprofit organization may enter into a contract with any individual, firm, association, or corporation to have the individual or entity operate bingo games or concessions on behalf of the nonprofit organization. A nonprofit organization may pay consulting fees to any individual or entity for any services performed in relation to the operation or conduct of a bingo game."

Amendment 744(4), Alabama Constitution (1901).

4. All versions of the Defendant's rules also provide that non-profit entities may contract with a for-profit entity to operate the bingo facility and games. Also, the Defendant's rules require that the for-profit entity submit documents to gain approval for the bingo facility.

5. Amendment 744 and the Defendant's rules create rights and benefits for for-profit entities as well as the non-profit entities. As such, the situation addressed in this case is quite different from the situation addressed by the Eleventh Circuit in *Alkov*.

6. The Court, in response to the Defendant's standing argument in the Motion to Dismiss to the Original which is similar to the argument asserted in the Motion to Dismiss the Amended Complaint, simply stated that the Plaintiff MCI needed only to allege that it was an applicant to cure its standing defect. *See* Order dated June 26, 2006, [Doc. 19-1]. The Plaintiff MCI followed this Court's directive and properly amended its Complaint.

7. The Eleventh Circuit's holding in *Alkov* was issued on May 24, 2006 – one month prior to this Court's June 26, 2006 Order. Therefore, the Court could have relied on *Alkov* if it deemed it to be applicable.

8. Additionally, it is important to note that *Alkov* was not selected for publication. Rule 36-2 of the Eleventh Circuit's Rules of Court (2005) provides:

> "An opinion shall be unpublished unless a majority of the panel decides to publish it. *Unpublished opinions are not considered binding precedent, but they may be cited as persuasive authority*."

Emphasis added. According to the Eleventh Circuit's own rules, this Court would not be bound by the *Alkov* decision to hold that the Plaintiff MCI lacks standing to bring the claims asserted in this case.

WHEREFORE, the Plaintiffs respectfully request that this Court not rely on the *Alkov* case in ruling upon the Defendant's Motion to dismiss as the case inapplicable and is not binding upon the Court.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon all counsel of record via this Court's electronic filing system on this the 11th day of December, 2006.

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